

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
CUSTOM SUBDIVISION DEVELOPERS,)
INC., STEPHEN D. FREEGARD, INC.,)
and STEPHEN D. FREEGARD,)
Appellants,)
v.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHB No. 81-169
FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the appeal from the issuance of a \$250 civil penalty for the alleged violation of Section 9.15(c) of Regulation I, came before the Pollution Control Hearings Board, Nat W. Washington, presiding, Gayle Rothrock and David Akana, Members, at a formal hearing in Lacey, Washington, on March 31, 1982.

Appellant Custom Subdivision Developers, Inc., was represented by its president George S. J. Paffile; respondent was represented by its attorney Keith D. McGoffin. Appellants Stephen D. Freegard, Inc., and

1 Stephen D. Freegard did not appear.

2 Having heard the testimony, having examined the exhibits, and
3 having considered the contentions of the parties, the Board makes these

4 FINDINGS OF FACT

5 I

6 Pursuant to RCW 43.21B.260, respondent has filed with the Board a
7 certified copy of its Regulation I and amendments thereto, which are
8 noticed.

9 II

10 In this matter, Custom Subdivision Developers, Inc., (CSD),
11 Stephen D. Freegard, Inc., (Freegard, Inc.), and Stephen D. Freegard
12 as an individual, (Freegard), are charged by Notice and Order of Civil
13 Penalty No. 5279 with a civil violation of Section 9.15(c) of
14 respondent's Regulation I. The civil charge is that appellants caused
15 or permitted untreated areas within a private lot or roadway to be
16 maintained without taking reasonable precautions to prevent
17 particulate matter from becoming airborne and that as a result,
18 particulate matter (dust) did become airborne.

19 III

20 Appellants Stephen D. Freegard, Inc., and Stephen D. Freegard did
21 not appear to prosecute their appeal although the time and place of
22 the hearing was duly communicated to said appellants, and they did not
23 request a continuance or postponement. Respondent moved that the
24 appeal of said appellants be dismissed with prejudice in accordance
25 with WAC 371-08-165(3).

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB No. 81-169

1 The Board took the motion under advisement and proceeded to hear
2 the appeal of Custom Subdivision Developers, Inc.

3 IV

4 On August 24, 1981, respondent's inspector responded to the
5 complaint of a neighbor that dust was blowing from the property of
6 appellant Freegard, Inc., and drove to the property which is located
7 near the 5100 block of East Lake Sammamish Parkway, Issaquah,
8 Washington. A trucking operation involved in a land fill was in
9 progress on the property. The inspector, at about 2:10 p.m., observed
10 that much dust was being raised as the trucks travelled over untreated
11 areas of a private roadway located on the property (Exhibits R-1 to
12 R-3). He observed that no reasonable precautions were being taken to
13 prevent particulate matter (dust) from becoming airborne. No water
14 truck was present.

15 V

16 On August 25, 1981, respondent's inspector talked to appellant
17 Freegard and learned that the property was owned by Freegard, Inc.
18 Freegard informed him that the fill material was being trucked to the
19 land by appellant Custom Subdivision Developers, Inc., under a
20 contract with Freegard, Inc. The inspector then issued a notice of
21 violation to CSD, Freegard, Inc., and Freegard.

22 VI

23 The property from which the dust was rising is legally described
24 in Exhibits R-5 and R-8.

25
26
27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER
PCHB No. 81-169

VII

George S. J. Paffile, president of appellant CSD, in his testimony at the hearing, denied that CSD was in any way responsible for the dust, since the trucks which raised the dust were not owned or operated by CSD, and that it was not the responsibility of CSD to control the dust. However, the admissions of Mr. Paffile contained in the notice of appeal of CSD in this matter clearly indicate it was material from a CSD job site which was being dumped on the Freegard property and that trucks which were hauling the material and raising the dust were being operated by a sub-contractor working under the direction of CSD. The notice of appeal clearly shows that the hauling operation was halted by CSD, indicating that CSD was in actual control of the operation.

VIII

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board enters these

CONCLUSIONS OF LAW

I

We conclude that appellant CSD, as shown by the admissions of its president in its notice of appeal dated October 27, 1981, was in control of the operations which resulted in the dust problem. These admissions of the president are fortified by portions of his testimony and by exhibit R-8 which is a copy of an agreement entered into between CSD and Freegard, Inc. We therefore conclude that appellant

1 CSD violated Section 9.15(c) as alleged.

2 II

3 We conclude that by reason of the failure of appellants Freegard,
4 Inc., and Freegard, to appear and prosecute their appeal that their
5 appeal should be dismissed with prejudice in accordance with WAC
6 371-08-165(3).

7 III

8 Freegard in his conversation with respondent's inspector admitted
9 that he procured appellant CSD to place fill on the land of his
10 company. This is supported by Exhibit R-8. It is clear that the
11 untreated open area from which the dust arose was located on land
12 under the ownership and control of Freegard, Inc.

13 IV

14 We conclude that the \$250 civil penalty should be affirmed as to
15 all three appellants. All three appellants are jointly and severally
16 liable to respondent for the \$250 civil penalty. The Pollution
17 Control Hearings Board is not the proper forum to decide as between
18 appellants what portion of the fine, if any, should be paid by each
19 appellant.

20 V

21 Any Finding of Fact which should be deemed a Conclusion
22 of Law is hereby adopted as such.

23

24

25

26

27

1 From these Conclusions the Board enters this

2 ORDER

3 The \$250 civil penalty (No. 5279) is affirmed as to all three
4 appellants.

5 DATED this 10th day of June, 1982.

6 POLLUTION CONTROL HEARINGS BOARD

7
8 
9 NAT W. WASHINGTON, Chairman

10 
11 GAYLE ROTHROCK, Vice Chairman

12 
13 DAVID AKANA, Lawyer Member
14
15
16
17
18
19
20
21
22
23
24
25